

STATE OF INDIANA ) IN THE TIPPECANOE COURT  
) SS:  
COUNTY OF TIPPECANOE) CAUSE NO. 19301-0608-PL-00035

STATE OF INDIANA,

Plaintiff,

v.

MIKE RAISOR PONTIAC, INC.,  
doing business as Mike Raisor Pontiac-  
Isuzu,

Defendant.

**FILED**

AUG 10 2006

*Steve P. Carter*  
Clark Superior Court No. 1 Tippecanoe Co.

RECEIVED BY CERTIFIED  
MAIL DATED AUG 08 2006

**COMPLAINT FOR INJUNCTION**  
**CONSUMER RESTITUTION, COSTS, AND CIVIL PENALTIES**

The State of Indiana, by Attorney General Steve Carter and Deputy Attorney General Mary Ann Wehmuller, petitions the Court pursuant to the Indiana Deceptive Consumer Sales Act, Indiana Code §24-5-0.5-1 *et seq.*, for injunctive relief, consumer restitution, investigative costs, civil penalties, and other relief.

**PARTIES**

1. The Plaintiff, State of Indiana is authorized to bring this action and to seek injunctive and other statutory relief pursuant to Ind. Code §24-5-0.5-4(c).
2. The Defendant, Mike Raisor Pontiac, Inc. is a domestic for-profit corporation, regularly engaged in the retail sale of new and used motor vehicles, with a principal place of business in Tippecanoe County located at 2911 East Main Street, Lafayette, Indiana.

## FACTS

3. At least since February 20, 1979, the Defendant has engaged in the retail sale of new and used motor vehicles to Indiana consumers.
4. On May 19, 1994, the Defendant entered Assurance of Voluntary Compliance #94-0023, with the Office of the Attorney General. The Assurance was filed with and approved by the Marion County Circuit Court. Attached hereto as Exhibit "A" is Assurance of Voluntary Compliance #94-0023.
5. Pursuant to paragraph 4 of the Assurance, the Defendant agreed to the following:  
"Respondent, in soliciting and/or contracting with consumers, agrees to refrain and shall not make, cause to be made or permit to be made, expressly or by implication, any representation, orally or in writing, that a previously titled motor vehicle is a new motor vehicle as that term is defined within Ind. Code § 9-13-2-111."
6. On February 11, 2006, the Defendant sold Mark Mischler a "new" 2006 Pontiac G6, [REDACTED] A copy of the Mischler purchase order is attached hereto as Exhibit "B".
7. The Defendant represented the 2006 Pontiac G6 to Mr. Mischler as a "new" car.
8. Several weeks after the purchase, Mr. Mischler received the title for the Pontiac G6 and discovered the vehicle had been previously titled to Mike Raisor Leasing on September 16, 2005, Indiana Title Number, 05077554046.
9. Ind. Code §9-13-2-111 defines a new motor vehicle as a motor vehicle:
  - (1) that has not been previously titled under IC 9-17 and carries a manufacturer's certificate of origin; or
  - (2) that has never been transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

10. The Pontiac G6 sold to Mr. Mischler was not a "new vehicle" as defined by Ind. Code §9-13-2-111.

11. The Defendant knew the Pontiac G6 sold to Mr. Mischler was not a "new vehicle".

**COUNT I - VIOLATIONS OF THE DECEPTIVE CONSUMER SALES ACT**

12. The transaction identified in paragraph 6 is a "consumer transaction" as defined by Ind. Code §24-5-0.5-2(1).

13. The Defendant, Mike Raisor Pontiac, Inc., is a "supplier" as defined in Ind. Code §24-5-0.5-2(3).

14. The Defendant's representation to Mischler that the 2006 Pontiac G6 was "new" violates the terms of Assurance of Voluntary Compliance 94-0023.

15. The Defendant's representation to Mischler that the 2006 Pontiac G6 was "new" violates the Indiana Deceptive Consumer Sales Act, Ind. §24-5-0.5-3(a)(3) because the Defendant knew or should have known the 2006 Pontiac was not "new" or unused as represented.

16. The Defendant's representation to Mischler that the 2006 Pontiac G6 was "new" violates the Indiana Deceptive Consumer Sales Act, Ind. §24-5-0.5-3(a) (1) by misrepresenting the characteristics and benefits of the vehicle sold to Mischler.

**COUNT II  
INCURABLE DECEPTIVE ACTS**

17. Plaintiff realleges paragraphs 1 through 16.

18. The Defendant intentionally sold the 2006 Pontiac G6 to Mischler as a "new" vehicle, when it knew the vehicle was in fact used.

19. The Defendant's representation as referenced in paragraph 6 constitutes an incurable deceptive act and is actionable by the Attorney General pursuant to Ind. Code §24-5-0.5-1 *et seq.*

**IRREPARABLE INJURY**

20. The misrepresentations set forth above will continue and will cause irreparable injury unless the Defendant Mike Raisor Pontiac, Inc. is enjoined from engaging in further conduct in violation of Ind. Code §24-5-0.5-1 *et seq.*

**RELIEF**

**WHEREFORE**, Plaintiff, State of Indiana, requests that the Court enter judgment against the Defendant Mike Raisor Pontiac, Inc. as follows:

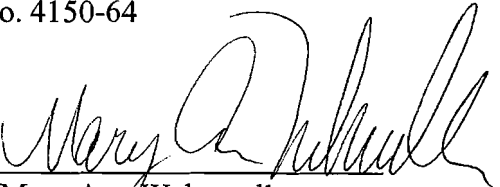
- a. A permanent injunction pursuant to Ind. Code §24-5-0.5-4(c) (1), enjoining the Defendant, its agents, representatives, employees, successors, and assigns, from:
  - 1) representing expressly or by implication, that a previously titled motor vehicle or a vehicle that was previously delivered to a purchaser is a new motor vehicle as defined by Ind. Code §9-13-2-111, and
  - 2) representing expressly or by implication that a motor vehicle offered for sale has characteristics or benefits it does not have when the Defendant knows or should reasonably know the vehicle does not have the characteristics or benefits represented.
- b. Consumer restitution for Mark Mischler to Ind. Code §24-5-0.5-4(c) (3), in the total amount of \$2,500.00;

- c. Costs pursuant to Ind. Code §24-5-0.5-4(c) (3), awarding the Office of the Attorney General its reasonable expenses incurred in the investigation and prosecution of this action;
- d. Civil penalties pursuant to Ind. Code §24-5-0.5-4(g), for the Defendant's knowing violations of the Deceptive Consumer Sales Act, in the amount of \$5000.00 per violation, payable to the State of Indiana;
- e. On Count II of the Plaintiff's Complaint, civil penalties pursuant to Ind. Code §24-5-0.5-8, for the Defendant's intentional violations of the Deceptive Consumer Sales Act, in the amount of \$500.00 per violation, payable to the State of Indiana;
- and,
- f. All other proper relief.

Respectfully submitted,

STEVE CARTER  
Indiana Attorney General  
Atty. No. 4150-64

By:

  
Mary Ann Wehmueeller  
Deputy Attorney General  
Atty. No. 15251-49A

Office of Attorney General  
Consumer Protection Division  
Indiana Government Center South  
302 W. Washington, 5<sup>th</sup> Floor  
Indianapolis, IN 46204  
Maw:326402

STATE OF INDIANA     )  
                              )  
COUNTY OF MARION    )

IN THE MARION CIRCUIT COURT  
AVC NO. 94 AVC 0023

IN RE:     MIKE RAISOR PONTIAC, INC.     )  
              doing business as             )  
              MIKE RAISOR PONTIAC-ISUZU,    )  
                                              )  
              Respondent.                    )

**FILED**

MAY 19 1994

*Faye L Mowery*  
CLERK

ASSURANCE OF VOLUNTARY COMPLIANCE

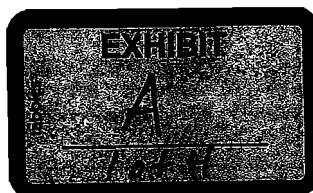
The State of Indiana, by Attorney General, Pamela Carter and Deputy Attorney General, Wayne Harris, and the Respondent, MIKE RAISOR PONTIAC, INC. doing business as MIKE RAISOR PONTIAC-ISUZU, pursuant to Ind. Code § 24-5-0.5-7, hereby enter into an Assurance of Voluntary Compliance (Assurance).

It is acknowledged that violation of this Assurance constitutes prima facie evidence of a deceptive act as defined by Ind. Code § 24-5-0.5-3(a). This Assurance is entered into without any adjudication of any issue of fact or law herein, and upon consent of the undersigned parties.

It is hereby agreed that:

1. Respondent, is an Indiana corporation with a principal place of business within Tippecanoe County at 2911 East Main Street, P.O. Box 4788, Lafayette, Indiana 47903.

2. Respondent acknowledges and admits responsibility and liability for acts, practices and methods employed by itself, its employees, agents and representatives acting within the course and scope of their employment.



3. Respondent acknowledges the jurisdiction of the Consumer Protection Division of the Office of Attorney General to investigate matters hereinafter described, pursuant to the authority of Ind. Code § 4-6-9-1 et seq., and Ind. Code § 24-5-0.5-1 et seq.

4. Respondent, in soliciting and/or contracting with consumers, agrees to refrain and shall not make, cause to be made or permit to be made, expressly or by implication, any representation, orally or in writing, that a previously titled motor vehicle is a new motor vehicle as that term is defined within Ind. Code § 9-13-2-111.

5. Respondent agrees to pay restitution in the amount of Eight Thousand Dollars (\$8,000.00) to the following consumers who were harmed by Respondent's acts:

	<u>Name</u>	<u>Amount</u>
1.	Donnie E. Longston	\$1,000.00
2.	Maurice L. Pendleton	\$1,000.00
3.	Sherrie L. & Gary A. Baugh	\$1,000.00
4.	Bret A. Taylor	\$1,000.00
5.	Anthony A. Harvey	\$1,000.00
6.	Michael J. Nelson	\$1,000.00
7.	Michael E. Lemming	\$1,000.00
8.	Richard & Teresa Foley	\$1,000.00

This sum is to be paid through the Office of Attorney General upon execution of this Assurance.



JOE M BARBOUR

SERIAL NO. [REDACTED]				INVOICE NO.		YEAR	MAKE		MODEL
NEW XX		USED	IC G0972	TR G0972		29788	2006	PONTIAC	G6
DATE FEBRUARY 11, 2006				STOCK NO.	KEY	BODY STYLE		COLOR	TRIM
				FP3669	I	4DR SDN		SILVER	192
									MILEAGE 2769

# THANK YOU

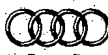
*We Most Sincerely Appreciate  
This Opportunity To Serve You. It  
Is Our Goal To Provide For Your  
Every Automotive Need. Do Not  
Hesitate To Avail Yourself Of Our  
Many Expert Services -*

## "THE SERVICE MINDED DEALER"



**Mike Raiser**  
PONTIAC-ISUZU-IMPORTS

2912 EAST MAIN STREET • P.O. BOX 4788  
LAFAYETTE, INDIANA 47903  
PHONE (765) 448-4582  
800-960-1511



Purchaser is responsible for and shall pay the amount, if any, by which the Balance Owed on the Trade-in exceeds the Trade-in Allowance.

## WARRANTY INFORMATION

**NEW OR DEMONSTRATOR:** If the vehicle is a new or demonstrator vehicle, the only written warranty provided with respect to the Vehicle and factory installed accessories is the most recent applicable printed warranty which is made solely by the Manufacturer of the Vehicle. Dealer installed Accessories are not included in the Manufacturer's warranty on the Vehicle and may or may not be included in separate written warranties which are made solely by Manufacturers of the Accessories.

USED: "The information you see on the window form for this vehicle is part of this contract. Information on the window form overrides any contrary provisions in the contract of sale." **DEALER DISCLAIMS ALL WARRANTIES, WRITTEN, EXPRESS OR IMPLIED, INCLUDING ALL WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.** WHETHER THE VEHICLE IS NEW, A DEMONSTRATOR OR USED, DEALER EXPRESSLY DISCLAIMS ANY OTHER LIABILITY TO PURCHASER, INCLUDING ANY CONSEQUENTIAL DAMAGES, LOSS OF TIME OR INCONVENIENCE ARISING OUT OF THE PURCHASE OR OPERATION OF THE VEHICLE.

Terms of Payment of Balance Due on Delivery:

CASH		CONSUMER CREDIT FINANCING BY OR THROUGH DEALER	
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THE ADDITIONAL TERMS AND CONDITIONS ON THE REVERSE SIDE OF THIS ORDER ARE INCORPORATED BY REFERENCE AND ARE A PART OF THIS ORDER.

Purchaser acknowledges that the Additional Terms and Conditions printed on the reverse side of this Order are a part of this Order. Both sides of this Order constitute a single agreement which supersedes any prior agreement or understanding between Dealer and Purchaser. Purchaser acknowledges receipt of a completed and signed copy of this Order. This order shall not become a binding agreement unless accepted in writing by Dealer or an authorized representative of Dealer.

ACCEPTED:

By \_\_\_\_\_ Title \_\_\_\_\_  
DEALER OR AUTHORIZED REPRESENTATIVE

THIS ORDER IS AN OFFER BY PURCHASER TO BUY THE VEHICLE. IF THE OFFER IS ACCEPTED BY THE DEALER IT BECOMES A COMPLETE CONTRACT OF SALE AND RESPONSIBILITIES NOT EXPRESSLY SET FORTH IN THE ORDER. BEFORE SIGNING THIS ORDER READ IT CAREFULLY.

EXHIBIT  
B